



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

REGISTERED MAIL

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October 1, 2004

Noel Gilbrough
U.S. Army Corps of Engineers
Environmental Resources Section
PO Box 3755
Seattle, WA 98124-2255

Dear Mr. Gilbrough:

Re: Order # 1629

U.S. Army Corps of Engineers # **CENWS-PL-04-02**

Water Quality Certification and Coastal Zone Management Consistency Determination to authorize construction of North Wind's Weir Restoration Site, Tukwila, King County, Washington.

The request for certification for proposed work in and adjacent to the Duwamish River has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Alice Kelly at (425) 649-7145. Written comments can be sent to her at the Department of Ecology, 3190 - 160th Ave. SE, Bellevue, WA 98008. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in cursive script, reading "Jeannie Summerhays".

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

JS:ak

Enclosure

cc: Victoria Luiting, Corps
Larry Fisher, WDFW

Yvonne Oliva, Ecology
Jon Hansen, King County



IN THE MATTER OF GRANTING A) ORDER # 1629
WATER QUALITY) Corps Reference No. PL-04-02
CERTIFICATION TO) North Wind's Weir Intertidal Restoration; 3.3
U.S. Army Corps of Engineers) acres of fill removal and grading to restore
in accordance with 33 U.S.C. 1341) intertidal and riparian habitat along east side
FWPCA § 401, RCW 90.48.120, RCW) Duwamish River; located in Section 4, T. 23 N.,
90.48.260 and Chapter 173-201A WAC) R. 4 E., Tukwila, King County, Washington.

TO: Noel Gilbrough
U.S. Army Corps of Engineers
Planning Branch
PO Box 3755
Seattle, WA 98124-3755

On January 5, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). The proposed project entails restoration of a 3.27 acre site along the right back of the Duwamish River to create approximately 1.66 acres of tidal channel and associated intertidal mudflat (below elevation +4 NGVD 88) and approximately 0.76 acres of intertidal and high marsh between elevations +4 and +10 feet NGVD 88 (+6.35 and -12.35 MLLW). A scrub-shrub wetland community between elevations +10 and +12 NGVD 88 (+12.35 and +14.35 MLLW) of approximately 0.17 acres would gradually transition to forested riparian buffer encompassing approximately 0.29 acres to the top of the area of excavation. 300 cubic yards of rock will be placed at the upstream side of the entrance channel to armor and stabilize the bank. The top and backside of the armoring will be capped with soil and planted with vegetation to increase habitat function and improve aesthetics.

The existing riprap and abandoned rubble currently along the shoreline will be excavated and removed. Approximately 0.06 acres of the western side of the existing intertidal marsh will be disturbed to match graded contours, but will be salvaged and replanted within the restoration site.

The proposal includes excavation of 65,000 cubic yards of soil and fill to create the intertidal mudflat and marsh along the right bank of the lower Duwamish River at approximately RM 6.2 in the City of Tukwila. Approximately 234 lineal feet of armored shoreline and 2.6 acres of industrial fill and associated chemical constituents will be removed and properly disposed at approved facilities. Petroleum-contaminated soil on the site will be cleaned up in accordance with Chapter 173-340 WAC.

For purposes of this Order, the term "Applicant" shall mean the U.S. Army Corps of Engineers and its agents and contractors.

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AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 1629 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC, water quality certification is granted to the U.S. Army Corps of Engineers subject to the following conditions:

A. No Impairment of Water Quality:

- A1. The Duwamish River is classified as Class B waters of the state. Certification of this proposal does not authorize U.S. Army Corps of Engineers to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the permittee from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. Turbidity in Class B waters shall not exceed 10 NTU over background when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

B. Notification

- B1. U.S. Army Corps of Engineers shall provide notice to Ecology's Alice Kelly at least 3 days prior to the start of construction. Notification can take place by e-mail to akel461@ecy.wa.gov, telephone to (425) 649-7145, fax to (425) 649-7098, or in writing.

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- C1. Cleanup of the upland soils shall be remediated such that the soil and groundwater at the site shall meet the provisions of the Model Toxics Control Act (Chapter 173-340 WAC) before final grading is completed and before a connection is made to the Duwamish River.
- C2. Dewatering water shall not be discharged to surface water unless testing indicates that it meets all water quality standards at the point of discharge (note: there is no mixing zone for stormwater or dewatering of construction sites). Construction dewatering water not meeting water quality standards shall not be discharged to surface water.
- C3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, and all other equipment, etc., shall be checked daily for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of the river.
- C5. Equipment used for this project shall be free of external petroleum-based products.
- C6. A qualified ecologist shall be on site to oversee project construction and riparian planting.
- C7. Mudflat / marsh construction and installation of the inlet structure shall be isolated from the flow of the Duwamish River by not disturbing the existing riverbank at the proposed outlet. The undisturbed portion of riverbank at the proposed outlet shall be substantial enough to prevent flood flows at high tide from entering the new off channel area during construction.
- C8. Before water is diverted into the mudflat / marsh, project grading shall be complete and approved fish habitat components, streambed materials, and bank protection to prevent erosion shall be in place.
- C9. With seven calendar days of project grading work, all disturbed riparian areas shall be protected from erosion using vegetation or other means.

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D. In-water Construction

- D1. WAC 173-201A-110(3) allows a 150-foot mixing zone for temporary exceedances of the turbidity standards during and immediately after necessary in-water or shoreline construction activities that result in the disturbance of in-place sediments. This certification does not authorize a mixing zone greater than that allowed by WAC 173-201A-110(3). The Applicant shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). Within the mixing zone, the Class B standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.
- D2. The waiver of specified standards within the mixing zone is intended for brief periods of time (such as a few hours or a day) and is not an authorization to exceed those standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm to the Duwamish River.
- D3. Timing Limitations: Excavation of the outlet of the off-channel habitat area to the river shall occur at low tide between July 1 and August 15.
- D4. Turbid water from initial connection to the Duwamish River shall be pumped upland to settle, receive treatment, infiltrate, evaporate, or be discharged to sanitary sewer, to control the amount of turbidity in the Duwamish River.
- D5. The fish habitat log structures shall be of fir, cedar, or other approved coniferous species.
- D6. Fish habitat components and bank protection material shall be installed to withstand the 100-year peak flows.
- D7. **Water Quality Monitoring:**
Sampling for turbidity shall occur as follows:
- Timing of samples: a minimum of every two hours throughout the first day of in-water construction activity. A background sample shall be collected before construction begins each day. Subsequent sampling is dependent upon monitoring results, but shall be a minimum of three times per day during in-water activity if no exceedances are detected. Sampling shall increase if exceedances are detected.
 - Location of samples: Background samples shall be collected upstream or upgradient of the area of activity, and 150 feet downstream or down current from the construction or activity.

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- Reporting of results: Results of water quality monitoring shall be submitted to Department of Ecology, Federal Permit Coordinator, 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098. If no exceedances are detected, results shall be submitted once a week. If exceedances are detected, results shall be submitted daily, and contingency measures and reporting as required by Condition F1 shall be implemented.

E. Stormwater Management:

- E1. The Applicant shall comply with the Stormwater Management Manual for Western Washington, August 2001 and the "Construction Stormwater Pollution Prevention and Sediment and Erosion Control Plan, North Wind's Weir Intertidal Restoration Project, Tukwila, King County, Washington" prepared by the US Army Corps dated February 19, 2004.
- E2. Use of flocculent, as described in plan notes on page 4 of 6, is not authorized by this certification.
- E3. During construction, the Applicant shall comply with all stormwater requirements within the Stormwater General Permit for Construction Activity (NPDES Permit) issued for this project, or any individual stormwater discharge permit Ecology may issue for this project.
- E4. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., detention and/or infiltration areas, silt fences, etc.), shall be in place before starting clearing, excavating, and grading work at the impact site.

F. Reporting and Monitoring:

- F1. "As-Built" Report: An "as-built" report documenting the final design of the restoration site shall be prepared when site construction and planting is completed. The report shall include the following:
- Vicinity map showing site access;
 - Final site topography;
 - Drawings that shall clearly identify the boundaries of the site;
 - The installed planting scheme showing quantities, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
 - Photographs of the area taken from permanent reference points;
 - Locations of photopoints, sampling and monitoring sites;
 - An analysis of any changes to the plan that occurred during construction.

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- a. A copy of the "as-built" report shall be sent to Department of Ecology, Federal Permit Coordinator, 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, within 90 days of completing plant installation.

F2. Maintenance and monitoring shall occur as specified in the "Maintenance and Monitoring Plan, North Wind's Weir Intertidal Restoration Project" dated January 28, 2004.

F3. Goose excluders shall be used to prevent overgrazing by geese at the site.

F4. Installation of the project plantings shall be completed prior to the start of the first growing season (March 1) subsequent to project clearing or grading.

F5. Project plantings shall be maintained and irrigated as necessary to ensure 80 percent or greater survival at the end of five years.

F6. Spring and fall inventories for invasive species shall be taken annually for the first five years post-construction.

F7. Invasive species shall be controlled such that they do not exceed more than 10% total cover at any time.

G. Emergency/Contingency Measures:

G1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Alice Kelly at (425) 649-7145.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

H. General Conditions:

H1. For purposes of this Order, the term "Applicant" shall mean U.S. Army Corps of Engineers and its agents, assigns, and contractors.

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- H2. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- H3. The applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- H4. The applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge.
- H5. The applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- H6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.
- H7. The Applicant shall provide to Ecology a signed statement (attachment A) from each project manager and construction superintendent working at the project site that they have read and understand the conditions of the above-referenced permits, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the site.
- H8. The applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- H9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

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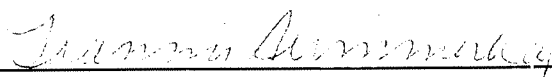
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- H10. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 10/1/04 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance
Program
Department of Ecology
State of Washington